

Panaji, 13th February, 2003 (Magha 24, 1924)

SERIES II No. 46

OFFICIAL GAZETTE



GOVERNMENT OF GOA

Note:- There is One Supplement and Three Extraordinary issues to the Official Gazette, Series II, No. 45 dated 6-2-2003 as follows:-

Supplement dated 6-2-2003 from pages 1041 to 1064 regarding Notification from Department of Law & Judiciary (Legal Affairs Division).

- 1. Extraordinary dated 7-2-2003 from pages 1065 to 1066 regarding Notification from Department of Sports (Directorate of Sports).*
- 2. Extraordinary No. 2 dated 7-2-2003 from pages 1067 to 1068 regarding Notification from Department of Finance (Budget Division).*
- 3. Extraordinary No. 3 dated 11-2-2003 from pages 1069 to 1070 regarding Notifications and Order from Departments of Finance (Revenue & Expenditure Division) and Urban Development respectively.*

GOVERNMENT OF GOA

Department of Education, Art & Culture

Directorate of School Education

Order

No. 14/5/92/EDN/50

Read:- Government Order No. 14/5/92/EDN-(Vol.I) Part/111, dated 23-09-2002.

Government is pleased to extend the period of ad hoc promotion of the below mentioned 10 Officers Group 'A' Gazetted on ad hoc basis in the pay scale of Rs. 10000-325-15,200/- as conveyed by the Goa Public Service Commission vide their letter Ref:- No. COM/II/11/15(1)/94, dated 23-01-2003, for further period as indicated against their names in the column No. 4 or till the posts are filled on regular basis, whichever is earlier:-

Sr. No.	Name of the Officer & present posting	Date of ad hoc promotion	Period of further extension of ad hoc promotion
1	2	3	4
1.	Shri Angelo Milagres Jesus Pimenta, Dy. Education Officer, South Educational Zone, Margao.	01-11-2001	01-11-2002 to 31-05-2003
2.	Dr. K. K. Nadkarni, Secretary, Goa Board of Secondary & Hr. Sec. Edn., Porvorim on deputation vice Smt. Neela G. Kerkar.	01-11-2001	01-11-2002 to 31-05-2003
3.	Shri M. N. Malkarnekar, Asstt. Director of Edn., Central Educational Zone, Panaji-Goa.	01-11-2001	01-11-2002 to 31-05-2003
4.	Shri Anil Vernekar, Asstt. Director of Edn. (Vocational), Directorate of Education, Panaji.	01-11-2001	01-11-2002 to 31-05-2003
5.	Shri Anil V. Powar, Asstt. Director of Edn. (Planning), Directorate of Education, Panaji.	01-11-2001	01-11-2002 to 31-05-2003
6.	Shri L. M. T. Fernandes, Asstt. Director of Edn. (Acad.), Directorate of Edn., Panaji.	01-11-2001	01-11-2002 to 31-05-2003

1	2	3	4
7.	Smt. I. L. D. Menezes, Dy. Director of Edn. (Vocation), Directorate of Education, Panaji.	26-11-2001	26-11-2002 to 31-05-2003
8.	Shri Y. P. Dhore, Asstt. Director of Edn. (Admn.), Directorate of Education, Panaji.	26-11-2001	26-11-2002 to 31-05-2003
9.	Shri A. R. Malkane, Asstt. Director of Edn. (Adult), Directorate of Education, Panaji.	30-11-2001	30-11-2002 to 31-12-2002 (Retired on superannuation w.e.f. 31-12-2002)
10.	Shri K. R. Naik, Asstt. Director of Edn. (Admn. III), Directorate of Education, Panaji.	30-11-2001	30-11-2002 to 31-05-2003

Shri A. R. Malkane, official at Sr. No. 9 above stands relieved upon having retired on superannuation with effect from 31-12-2002, vide order No. 10/2260/2002-Adm.I/3379 dated 31-12-2002 issued by the Director of Education, Directorate of Education, Panaji.

By order and in the name of the Governor of Goa.

Dilip Sardesai, Under Secretary (School Education).

Panaji, 29th January, 2003.

Department of Forest

Order

No. 10/1/2003-FD

Read: Order No. 1-V-70-2000/4850 dated
21-12-2000.

In supersession of the Order cited above and in pursuance of Article 76(i) and (iii) of Articles of Association of the Goa Forest Development Corporation Limited, Ponda, the Government of Goa is pleased to appoint the following persons as Chairman and Members of the Board of Directors of Goa Forest Development Corporation Limited, Ponda, with immediate effect.

- | | |
|---|--------------|
| 1. Shri Mangaldas Gawas,
Navelim, Pale-Goa. | ... Chairman |
| 2. Chief Conservator of Forests. | ... Director |
| 3. Shri Govind Korgaonkar,
Golali, Thane, Satari-Goa. | ... Director |
| 4. Shri Gopal Shetgaonkar,
Munangwada, Morji,
Pedne-Goa. | ... Director |
| 5. Shri Narayan Kuro Velip,
Khede-Paddi, Cuncolim-Goa. | ... Director |
| 6. Shri Umesh Naik,
Palolem, Canacona, Goa. | ... Director |
| 7. Shri Ramesh Tawadkar,
Amone, Poinguinim,
Canacona-Goa. | ... Director |
| 8. Shri Vishwas Gaonkar,
Gaonkarwada, Nanoda, Goa. | ... Director |

- | | |
|---|--|
| 9. Shri Kalidas Gawde,
Vantem-Bhironda,
Satari-Goa. | ... Director |
| 10. Shri Saktharam Pednekar,
Mayem-Goa. | ... Director |
| 11. Shri Prakash P. Dessai,
Collem-Shigao-Goa. | ... Director |
| 12. Managing Director,
Goa Forest Development
Corpn. Ltd. | ... Director and
Member
Secretary. |

The term of the Board of Directors will be for a period of 3 years with effect from the date of issue of this order.

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Forests).

Panaji, 30th January, 2003.

Department of Information Technology

Order

No. 1(34)/DOIT/Staff/2001

In supersession of order No. 1(34)/DOIT/Staff/2001 dated 21-01-2003 and in exercise of powers vested in the Government under Article 145 of the Articles of Association of Info Tech Corporation of Goa Limited, Shri P. Chandekar, Director (Information Technology) is hereby appointed as the Managing Director of Info Tech Corporation of Goa Limited, in addition to his existing duties, until further orders.

By order and in the name of the Governor of Goa.

B. S. Bhalla, Secretary (Information Technology).

Panaji, 30th January, 2003.

Department of Labour

Order

No. 28/7/2001-LAB

The following Award dated 4-8-2002 in Reference No. IT/62/89 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Sanjiv M. Gadkar, Under Secretary (Labour).

Panaji, 16th September, 2002.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/62/89

Shri Yeshwant D. Divkar,
H. No. 367, Borda,
Margao - Goa.

... Workman/Party I

v/s

The Managing Director,
M/s. Kadamba Transport
Corporation Ltd.,
Panaji-Goa.

... Employer/Party II

Workman/Party I - Represented by
Shri K. V. Nadkarni.

Employer/Party II - Represented by
Adv. Shri P. J. Kamat.

Panaji, dated:- 14-8-2002.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 30th August, 1989 bearing No. 28/50/86-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Kadamba Transport Corporation Limited, Panaji, in terminating the services of Shri Yeshwant D. Divkar, Cashier-cum-L.D.C., with effect from 3-1-86 is legal and justified ?

If not, to what relief the workman is entitled to ?

2. On receipt of the reference a case was registered under No. IT/62/89 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties

put in their appearance. The workman-Party I (for short, "workman") filed his statement of claim at Exb. 2. The facts of the case in brief as pleaded by the workman are that he was appointed as a Cashier cum LDC by the employer-Party-II (for short, "employer") w.e.f. 27-9-1982 and thereafter he was appointed on probation vide order dated 17-10-84 w.e.f. 1-10-84. That he fell sick from 3-11-85 and was under treatment at Margao Hospicio Hospital 5-11-85 to 11-11-85 and thereafter he was under treatment of ESI Medical Hospital from 12-11-85 to 20-11-85. That on being declared fit he reported for duties on 21-11-85, submitted all his medical certificates and worked in the morning session and he was paid his unpaid wages for the month of October, 1985 and he also signed the muster roll. That when he reported for work after lunch break he was stopped by the security personnel who told him that he had instructions from the Depot Manager to remove him physically if he refused to leave the depot and therefore he had to leave the depot premises. That the same day he went to meet the Managing Director along with the complaint dated 21-11-85 and he could not meet him on that day nor on the following day and therefore he delivered the same complaint in the office and obtained acknowledgment and he also delivered a copy of the said complaint in the office of the Depot Manager. That thereafter he received a charge sheet dated 21-11-85 on 2-12-85 from the Depot Manager which establishes that the Depot Manager had tried to create evidence against him after he had made a complaint regarding refusal of employment to him on 21-11-85. That he replied to the said charge sheet by his letter dated 5-12-85 but he received another letter dated 23-12-85 from the Personnel Manager on 26-12-85 during the time when he was sick from 24-12-85 and was under treatment in the Margao Hospicio Hospital and that inspite of being sick he went to the Depot Manager on the same day in the evening and reported to him about his sickness from 24-12-85 and also personally handed over a note in the office. That before he could reply to the letter dated 23-12-85 he received a letter dated 3-1-86 from the employer informing him that his name is deleted from the muster roll w.e.f. 3-1-86. That in the said letter the provision of the Certified Standing Orders were quoted under which his name was deleted from the muster roll. The workman contended that the question of his abandonment of service did not arise as it was the Depot Manager who refused employment to him in the afternoon of 21-11-85. That on being declared fit to resume duties he submitted a letter dated 29-1-86 in the office of the General Manager & Administration on 30-1-86 and offered himself for duties and also produced medical certificate in support of his sickness from 24-12-85 to 29-1-86 but the General Manager told him he wanted to study the matter and he would call him within a couple of days to convey his decision in the matter. That since no communication was received till 4-2-86 he again wrote a letter dated 4-2-86 inviting the attention of the General Manager to his letter dated 29-1-86 but no reply was received from him. That therefore he wrote a letter dated 1-3-86 to the Managing Director bringing to his notice about the illegal deletion of his name from the muster roll as well

as drawing his attention to the letter dated 29-1-86 addressed to the General Manager showing him his willingness to report for duties. That thereafter he received a letter dated 11-4-86 from the employer asking him to produce the evidence of having sent the medical certificate to the employer within 10 days which was done by him. That thereafter he received a registered A/D letter dated 5-5-86 from the Personnel Officer wherein was enclosed a copy of the order dated 3-5-86 of the Managing Director upholding the decision of the General Manager. That though the charge sheet was issued to him, no enquiry was conducted against him. The workman contended that termination of his service amount to retrenchment and since the provisions of Sec. 25F were not complied with, the termination is illegal, void and bad in law. The workman therefore claims that he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 3. The employer admitted that the workman was employed as cashier cum LDC and that he was confirmed after completing the probation period. The employer stated that initially the workman was employed at Porvorim Depot and after being transferred to Margao Depot in July, 1983 he was again transferred to Porvorim Depot w.e.f. 31-7-85. The employer stated that from the time the workman was re-transferred at Porvorim Depot his work progress deteriorated and the Depot Manager had to issue warning letters to him. The employer stated that in order to give chance to the workman to improve his work the Depot Manager did some reshuffling of assignment of different clerks including of the workman vide Memo dated 1-11-85 which the workman refused to accept as he was not interested in accepting the new assignment and he started remaining absent. The employer stated that when the Depot Manager himself tried to serve the said order on the workman he refused to accept the same and therefore he was issued another memo dated 4-11-85 which the workman refused to accept. The employer stated that the workman continued to remain absent at the work place and failed to carry out the assignment given to him in the memo dated 1-11-85. That on 7-11-85 when the workman visited the depot, attempt was made to serve the memo dated 4-11-85 on him but he refused to accept the same after going through it and from thereafter he continued to remain absent without giving intimation or permission. The employer stated that the workman came to the Depot on 21-11-85 and collected his salary for the month of October, 1985 and received the Memos dated 1-11-85 and 4-11-85 but did not receive his dues. The employer stated that therefore a charge sheet dated 21-11-85 was issued to him which was sent by registered A/D post. That in the meantime the workman tried to create a false record of having reported for duties on 21-11-85 by writing letter to the General Manager and hence a letter dated 23-12-85 was sent to the workman directing him to report for duties but he did not do so and since he continued to remain absent action was taken against him under clause 24 A(ii) of the Standing Orders. The employer stated that in terms of the said

clause the workman was declared to have voluntarily resigned w.e.f. 3-1-86 as per the memo dated 3-1-86 and there was no termination of service of the workman. The employer stated that the workman had preferred appeal to the Managing Director who after going through the records dismissed the said appeal vide order dated 3-5-86. The employer denied that the workman came to the depot on 21-11-85 for joining duties or that he produced any medical certificate or that he performed any duties on that date. The employer stated that on 21-11-85 the workman came to the Depot, collected his unpaid wages and 2 memos and thereafter went away. The employer stated that by letter dated 23-12-85 the workman was asked to resume duties but in spite of the receipt of the said letter he did not do so. The employer denied that the workman reported at the depot and reported about his sickness and stated that in fact he did not report for work after 21-11-85. The employer denied that the workman met the General Manager on 30-1-86 or that he gave letter dated 29-1-86 accompanied by medical certificates. The employer stated that the services of the workman are neither terminated nor retrenched but is deemed to have voluntarily resigned from service as per the Certified Standing Orders and as such he is not entitled to any relief as claimed by him. The workman thereafter filed rejoined at Exb. 4.

4. On the pleadings of the parties, following issues were framed at Exb. 5.

1. Whether Party I proves that he was unable to join duties from 3rd November, 1985 to 21st November, 1985 on account of sickness as alleged?
2. Whether the Party I/Workman resumed duties on 21-11-85 and he was wrongfully prevented from continuing his duty in the second half of the day as contended in para. 9 of the claim statement?
3. Whether Party II/Employer proves that the Party I/Workman remained absent without intimation or prior permission for a period exceeding 30 days and as such he be deemed to have resigned from the services as alleged?
4. Whether Party II by letter dated 23-12-85 directed Party I to report for duties but Party I/Workman failed to do so as alleged?
5. Whether the Memo issued to the workman on 3-1-86 amounts to resignation and not the termination of the services of the workman as contended in para. 10 of the written statement?
6. If so, whether the action of the management of M/s. K.T.C. Panaji in terminating the services of the Party I, Yeshwant D. Divkar, w.e.f. 3-1-86 is just and legal in the circumstances of the case?
7. If not to what reliefs is the Party I/Workman entitled to?

5. My findings on the issues are as follows:

Issue No. 1: Party I was sick from 5th November, 1985 to 19th November, 1985 and hence was unable to attend duties during this period.

Issue No. 2: In the affirmative as regards resuming duties on 21-11-85. In the negative as regards preventing him from continuing his duties in the second half of the day.

Issue No. 3: In the negative.

Issue No. 4: In the affirmative.

Issue No. 5: Memo dated 3-1-86 amounts to termination of service and not resignation

Issue No. 6: In the negative.

Issue No. 6: As per para 24 below.

REASONS

6. Issue No. 1: Infact the issue No. 1 ought to have been to the effect whether the workman proves that the he was unable to join duties from 3rd November, 1985 to 20th November, 1985 on account of its sickness and not from 3rd November, 1985 to 21st November, 1985. This is because the workman in his claim statement at para. 6 has stated that he was under treatment of ESI Medical Officer from 12-11-1985 to 20-11-85 and at para. 7 of the claim statement he has stated that he reported for duties on 21-11-1985. According to the workman he was sick from 3-11-85 to 21-11-85. Shri K. V. Nadkarni, representing the workman submitted that the workman in his evidence has produced the medical certificate issued by the Margao. Hospicio Hospital at Exb. 12 and the medical certificate issued by the ESI Medical Officer at Exb. 13 which prove that the workman was sick during the period 5-11-85 to 20-11-85. Avd. Shri P. J. Kamat, representing the employer submitted on the other hand that the workman was not sick from 4-11-85 to 20-11-85 nor he attended the duties on 21-11-85. He submitted that an order dated 1-11-85 Exb. 27 which was regarding change in the duties of the staff was attempted to be served on the workman on 4-11-85 which he refused to accept and from thereafter he remained absent. He submitted that another order dated 4-11-85 Exb. 28 was attempted to be served on the workman on 7-11-85 along with the order dated 1-11-85 but he refused to accept the same and the remarks to that effect have been put on the order dated 4-11-85. He submitted that the workman received both the said orders only when he had come to the depot to collect his wages and after collecting the same he went away. He submitted that the workman did not send any intimation to the management regarding his sickness. He submitted that charge sheet dated 21-11-85 Exb. 16 was issued to the workman for his absence from 4-11-85 to 20-11-85.

7. The contention of the workman is that he fell sick on 3rd November, 1985 and as such he could not attend the duties from 3rd November, 1985 to 23rd November, 1985. The contention of the employer is that on 4th November, 1985 an order dated 1-11-85 which was regarding the change in the duties of the staff was attempted to be served on the workman but he refused to accept the same and remained absent from that date. The contention of the employer also is that on 7-11-85

attempt was made to serve the letters dated 1-11-85 and 4-11-85 on the workman but he refused to accept them and the remark to that effect is put on the letter dated 4-11-85. The employer's contention is that no intimation was sent by the workman to the management in respect of his sickness, and therefore his contention that he was sick during the period 3-11-85 to 20-11-85 is false. The workman has examined himself in support of his case whereas the employer has examined Shri Anil Prabhu, Shri Yeshwant Gaude, Shri Sanjay Ghate and Shri Shaba Naik. It is an admitted fact that in November, 1985 the workman was working at Porvorim Depot as a Cashier cum LDC. Though in the claim statement the workman stated that he was sick from 3rd November, 1985 to 20th November, 1985, he himself has stated in his evidence that he was on duty from 1-11-1985 to 4-11-1985 and that thereafter he fell sick and was under treatment from 5-11-1985. Therefore according to the workman himself he fell sick from 5-11-1985 and not from 3-11-1985. It is the contention of the employer that the workman was not sick but he remained absent after he refused to accept the order dated 1-1-85 Exb. 27 which was served on him on 4-11-85. Infact there is contradictory evidence on this aspect from the employer. The muster roll has been produced at Exb. 32. This muster roll shows that the workman attended the duties on 4-11-85 for the full day. The employer's witness Mr. Anil Prabhu stated in his deposition that on 4th November, 1985 the workman was not in the premises and that he called him from outside. He stated that he tried to serve the memo dated 1-11-85 on the workman but he refused to accept and accordingly he made an endorsement to that effect on the said memo Exb. 27. He stated that thereafter he gave one more memo dated 4-11-85 Exb. 28 and since on 4-11-85 the workman was not on duty he gave the said memo to the Accountant. He stated that he also made an endorsement of absence on the muster roll. The question that arises is if the workman was not on duty on 4-11-85, why he came to the depot on that day? The muster roll Exb. 32 produced by the employer disproves the contention of Mr. Anil Prabhu that the workman was not on duty on 4-11-85. In his cross examination the muster roll was shown to him and he admitted that the workman has signed the muster roll on 4-11-85 in token of having attended the duty. The muster roll is signed by the workman for the morning shift as well as for the afternoon shift. The witness Mr. Prabhu has tried to cover up by saying that sometimes the workman used to sign at the same time for both the shifts. This explanation of the witness is difficult to be accepted. No employer would allow a workman to sign the muster roll for both shifts at one time. Even then, the question is if the workman had not attended the duty on 4-11-85, how he was allowed to sign the muster roll? There is no explanation from the witness Mr. Anil Prabhu in this respect. However the employer's other witness by name Mr. Sanjay Ghate has admitted in his cross examination that the workman was on duty on 4-11-85. The workman has produced the medical certificates dated 12-11-85 Exb. 12 issued by the medical officer of Hospicio Hospital, Margao. This certificate states that the workman was under the

treatment in the said Hospital for influenza from 5-11-85 till 11-11-85. The workman has also produced the medical certificate issued by the ESI Medical Officer dated 19-11-85 Exb. 13. This certificate states that the workman was sick from 12-11-85 and that he was fit to resume duties from 20-11-85. In the cross examination of the workman the employer did not deny or dispute these medical certificate. I do not find any reason to disbelieve these medical certificates. These medical certificates therefore prove that the workman was sick from 5-11-85 to 19-11-1985.

8. The case which the employer has tried to set up is that the workman did not remain absent because of his sickness but because he did not want to take up the new work assigned to him vide order dated 1-11-85 and that he remained absent after he refused to accept the said order on 4-11-85. In support of this contention the employer has produced the order dated 1-11-85 Exb. 27 and the memo dated 4-11-85 Exb. 28. The Depot Manager, Mr. Anil Prabhu in his deposition has stated that the workman was not in the premises and that he called him from outside, and that when he tried to give him the memo/letter dated 1-11-85 he refused to accept the same in the presence of the other. Mr. Prabhu in his evidence did not mention the names of the persons in whose presence the workman refused to accept the memo dated 1-11-85. According to him the workman was not on duty on 4-11-85 and he was not in the premises and therefore he called him from outside. The muster roll Exb. 32 proves that the workman was on duty on 4-11-85 which fact is also admitted by the employer's witness Mr. Ghate. The endorsement on the order dated 1-11-85 Exb. 27 as well as the memo dated 4-11-85 Exb. 28 mentions that the workman refused to accept the order dated 1-11-85 at 11.45 hrs. However, the employer's witness Mr. Anil Prabhu has stated in his deposition that after the workman refused to accept the memo dated 1-11-85, he issued another memo dated 4-11-85 to him and that because the workman was not on duty he gave the said memo to the Accountant and made an endorsement as absence on the muster roll Exb. 32. In the remarks column of the muster roll dated 4-11-85 there is an endorsement that the workman did not report for duty after 11.00 hrs. Therefore as per the evidence of Mr. Anil Prabhu the memo dated 1-11-85 Exb. 27 was refused to be accepted by the workman either before or at around 11.00 hrs. whereas the endorsement on the memo/order dated 1-11-85 Exb. 27 as well as the memo dated 4-11-85 Exb. 28 mentions that the workman refused to accept the order dated 1-11-85 at 11.45 hrs. This is a major contradiction or discrepancy in the evidence of the employer. Further merely because there is an endorsement that the workman has refused to accept the order and the said endorsement is signed by two witness, it does not mean that the workman had really refused to accept the order. The witnesses who have signed the endorsement are the employees of the employer. Such an endorsement can be made to create an evidence. Same is the case in respect of the endorsement on the memo dated 4-11-85 Exb. 28. There is no corroborative evidence to show that

the workman had come to the depot on 7-11-85. Mere endorsement on the memo that the workman refused to accept the order dated 1-11-85 and the memo dated 4-11-85 cannot be accepted to be the proof that the workman had really refused to accept the order and the memo on 7-11-85. Therefore the contention of the employer that the workman remained absent after he refused to accept the order dated 1-11-85 on 4-11-85 which was regarding the change in duties of the staff including the workman cannot be accepted. The workman has led sufficient evidence in the form of medical certificates to prove that he was sick from 5-11-85 to 19-11-85 and that due to his sickness he was unable to attend the duties from 5-11-85 to 19-11-85. In the circumstances, I hold that the workman has succeeded in proving that he was unable to join duties from 5th November, 1985 to 19th November, 1985 and not from 3rd November, 1985 to 21st November, 1985 as the medical certificates produced by him show that he was sick and under treatment from 5th November, 1985 to 19th November, 1985 and also the evidence shows that he had attended the duties on 4-11-85. I, therefore answer the issue No. 1 accordingly.

9. Issue No. 2: Shri K. V. Nadkarni, representing the workman submitted that the workman in his evidence has stated that he reported for duty on 21-11-85 and that he signed the muster roll and attended the work. He submitted that the muster roll for the month of November, 1985 has been produced at Exb. 32 which shows that the workman has signed the same on 21-11-85. He submitted that the employer's witness Mr. Anil Prabhu has admitted that the workman has signed the muster roll on 21-11-85 and that somebody has scored against his name and further that the employer's other witness Shri Shaba Naik also has admitted that the workman entered the depot on 21-11-85 after signing the punching card and the muster roll. He submitted that by letter dated 21-11-85 Exb. 33 the workman had informed the Managing Director that he was not allowed to enter the security as per the order of the Depot Manager. He submitted that the remarks put on the said letter are fabricated because the remarks say that the matter was discussed on 8-12-85 whereas the said remark is signed on 7-12-85. Adv. Shri P. J. Kamat, representing the employer submitted on the other hand that though the workman came to the depot on 21-11-85, he did not attend the duties but he collected his wages, the order dated 1-11-85 and the memo dated 4-11-85 and thereafter went away. He submitted that though the workman had signed the muster roll, it does not mean that he had attended the work. He submitted that the workman was marked absent because after receiving the wages, the order and the memo he had gone away. He submitted that the workman in his letter dated 21-11-85 Exb. 85 has not stated that he signed the muster roll in the morning and attended the duties and that thereafter he was not allowed to work in the evening. He submitted that there is no evidence from the workman to prove that he was not allowed to work on 21-11-85 though he had reported for duties.

10. The workman in his deposition has stated that he reported for duty on 21-11-85, signed the muster roll and attended the office work. He has stated that in the same evening he was issued a charge sheet and he was asked by the Security Officer to leave the depot as per the instructions of the Depot Manager. He has stated that he made a complaint dated 21-11-85 Exb. 15 to the Depot Manager and delivered it on 23-11-85 as he was not available on the previous two days. In his cross examination he stated that he signed the muster roll on 21-11-85 in the cabin of the Security Officer. He denied the suggestion that he signed the muster roll for both the shifts at one time or that the workers have the habit of signing the muster roll for both the shifts in the morning. He denied the suggestion that he received the letters Exb. 27 and 28 in the morning and stated that he received them in the evening and after receiving his salary in the evening he went home. He stated that he was not given any written order for not reporting for duty on the next day. He stated that he gave the complaint Exb. 15 to the Managing Director on 23-11-85 and to the Chairman on 25-11-85. He stated that he got the letter/complaint dated 21-11-85 Exb. 15 typed at Panaji where he had gone and since the Managing Director was busy he could not deliver the said letter to him and that thereafter at 4.30 p.m. he went to the Depot Managing and gave the copy of the said letter to the security guard. He stated that on 22-11-85 he came to Panaji but the Managing Director was not there and he did not give the letter to the dispatch clerk because he wanted to see the Managing Director personally, and that he gave the letter to the concerned clerk on 23-11-85. He stated that on 25-11-85 he wanted to see the Gen. Manager Mr. Ingale and that he delivered the letter to the clerk and obtained his receipt. The employer's witness Mr. Anil Prabhu, the Depot Manager, stated in his evidence that on 21-11-85 the workman came to his office at 10.00 a.m. and on his accepting the memo Exb. 27 and 28 the Accountant released his salary and that thereafter the workman went away. He stated that on 21-11-85 the workman signed the muster roll but did not perform any duty. He stated that on 21-11-85 the workman did not give him any documents and that thereafter he issued a charge sheet Exb. 16 which was sent by post. In his cross examination he denied the suggestion that on 21-11-85 he refused employment to the workman and drove him out with the help of the security guard. The witness Mr. Shaba Naik stated in his deposition that in 1985 he was working at the Porvorim Depot as a senior security and that the workman was working as a clerk at the said depot. He stated that on 21-11-85 he had seen the workman entering the depot at 9.00 a.m. and after punching the card he went towards the canteen and that at about 10.30 a.m. the workman came out of the depot and went away after passing through the main gate and that when he inquired with him he told him that he was going home. In his cross examination he stated that after punching the card and signing the muster roll the workman went to the depot for duty. He stated that there is a system of issuing out pass whenever an employer goes out of the depot in the

course of his duty hours and that the workman had not given to him the outpass when he passed through the main gate at 10.50 a.m.

11. The evidence discussed above proves that the workman had reported for duty on 21-11-85. This fact is admitted by the employer's witness Mr. Shaba Naik, the senior security. However his contention and that of Mr. Anil Prabhu the Depot Manager that the workman left the depot in the morning is not supported by any evidence. The signing of the muster roll by the workman on 21-11-85 is admitted by the Depot Manager Mr. Anil Prabhu. The muster roll Exb. 32 shows that the workman had signed for the morning shift as well as afternoon shift. This shows that the workman had attended the afternoon shift after lunch break. The employer in the cross examination of the workman has tried to explain the signature of the workman on the muster roll for the afternoon shift by suggesting to the workman that he had signed the muster roll for both the shifts at one time and that the workers have the habit of signing for muster roll for both the shifts in the morning. These suggestions have been denied by the workman. The above contention of the employer is not supported by any evidence. None of the witnesses examined by the employer have stated that the workman signed the muster roll on 21-11-85 for both the shifts at one time or that he and the other workers had the habit of signing the muster roll for both the shifts in the morning shift. The proper person to depose on this issue would have been the person in whose presence the muster roll was being signed or the person who was maintaining the muster roll. However, the employer has not examined this person. Therefore in the absence of any evidence, the contention of the employer that on 21-11-85 the workman signed the muster roll for both shifts at one time in the morning cannot be accepted. Since the muster roll has been signed by the workman for both the shifts, that is morning and afternoon, the only presumption which can be drawn in the absence of any evidence to the contrary is that the workman had worked in the morning shift as well as in the afternoon shift on 21-11-85. The employer has tried to bring on record through the evidence of Shri Shaba Naik, the senior security on duty at the Porvorim Depot on 21-11-85 that at about 10.30 a.m. the workman came out of the depot and went away after passing through the main gate and that when he inquired with him he told him that he was going home. However, in his cross examination he has admitted that an outpass is issued to an employee if he wants to go out during working hours and that the workman had not given to him the outpass when he passed through the main gate. Therefore the statement of Shri Shaba Naik that the workman went home at 10.00 a.m. is not supported by any evidence. I, therefore hold that the workman has succeeded in proving that he resumed his duties on 21-11-85 and that he attended the duties in the morning shift as well as in the afternoon shift.

12. Now the question is whether the workman was prevented from continuing his duty in the second half of 21-11-85. The workman in his deposition has stated

that he was issued a charge sheet and he was asked to leave the depot by the Security Officer as per the instructions given by the Depot Manager. He has stated in his deposition that he made complaint to the Depot Manager on 23rd November, 1984 because he was not available on previous two days. In his cross examination he stated that no written order was given to him asking him not to report and also that he does not remember the name of the Security Officer who told him to leave the depot. He further stated that he gave the letter to the Managing Director on 23-11-85 and to the Chairman on 25-11-85. He stated that he got the letter/complaint dated 21-11-85 typed at Panaji and took it for the Depot Manager on the same day at 4.30 p.m. and that he had gone to the Managing Director on the same day but as he was busy he could not deliver it to him and that thereafter he went to the Depot Manager and gave a copy of the same to security guard at about 4.30 p.m. and that he does not remember his name. He stated that he came to Panaji on 22-11-85 but the Managing Director was not there and that he did not hand over the said letter to the dispatch clerk because he wanted to see the Managing Director personally, and further that he gave the letter to the concerned clerk on 23-11-85. He stated that he went to see the General Manager Mr. Ingalye on 25-11-85 and delivered the letter to the clerk and obtained his receipt. The evidence which is discussed above does not prove that the workman was prevented from continuing his duty in the second half of 21-11-85. The complaint/letter dated 21-11-1985 by the workman addressed to the Managing Director about not allowing him to join the duties by the Security Asst. as per the order of the Depot Manager has been produced at Exb. 15. The workman has stated that he gave the copy of the same to the Depot Manager on 23-11-1985 because the Depot Manager was not available for two days. However he has stated further that he gave the copy of the letter to the security guard. He has also stated that he got the letter typed at Panaji on 21-11-85 and took it to the Depot Manager on the same day at 4.30 p.m. If this was so, he could have very well given the said letter to the Depot Manager who was admittedly present in the depot at that time or to the security guard or to the entry clerk or any other person authorised to receive the correspondence. It is not his case that after two days he handed over the letter to the Depot Manager personally. Similarly he could have very well given the letter dated 21-11-85 in the office of the Managing Director and the Chairman on 21-11-85 itself as he had got the said letter typed at Panaji because even otherwise he did not personally hand over the letter to the Managing Director or to the Chairman or to the General Manager. According to him he handed over the letter to the concerned clerks on 23-11-85 and 25-11-85 which he could have very well done on 21-11-85 itself or on 22-11-85. This delay on the part of the workman creates a doubt as to whether he was really prevented from continuing his duties in the second half of 21-11-85. Besides the workman himself has admitted that there was no oral order asking him not to report. He has also stated that he does not remember the name of the security assistant who told

him to leave the depot. it is difficult to believe this statement of the workman. Also there is a letter dated 23-12-85 produced at Exb.18. This letter is written by the Personnel Officer to the workman in pursuance to his letter dated 21-11-85 denying that the Depot Manager had ordered the Security Asst. not to give entry to him, and he was asked to report for duties within 8 hours of the receipt of the letter. Merely because the workman in his letter had alleged that he was prevented from continuing his duty, it does not mean that it was really so. The said letter of the workman ought to have been supported by some evidence. In my view there is absolutely no evidence from the workman that he was prevented from continuing his duties in the second half of 21-11-85 though it is a fact that he had left the depot after attending the duties in the afternoon session. I, therefore hold that the workman has failed to prove that he was prevented by the Security Asst. on 21-11-85 from continuing his duties in the second half as per the order of the Depot Manager. I, therefore answer the issue No. 2 accordingly.

13. Issue No. 3: the contention of the employer is that even if it is admitted that the workman had attended the duties on 21-11-85, there is no record to show that the workman had attended the duties at any time from 22-11-85 till his services were terminated on 3-1-86 nor there is evidence to show that he was refused employment during this period. Adv. Shri P. J. Kamat, representing the employer has submitted that during this period no intimation was received from the workman that he was sick nor medical certificates were produced by him. He has submitted that the workman had remained absent continuously for a period of more than 30 days without prior permission or intimation and therefore as per the Certified Standing Orders of the employer he was deemed to have resigned from service, and as such the employer considered that he had voluntarily resigned from service.

14. The certified standing orders of the employer are on record. They were produced in terms of the order dated 25-9-1995 passed by this Tribunal. Clause 24A of the said certified standing orders provides for termination of employment of workman 24A(ii) states as follows:

"If any workman remains absent without intimation or prior permission for a period exceeding 30 days he shall be deemed to have resigned from the services and the employer is entitled to consider such workman having voluntarily resigned from his job"

The letter dated 3-1-1986 invoking the clause 24A(ii) of the certified standing orders and deleting the name of the workman from the muster roll has been produced at Exb. 19. This letter states that the workman remained absent without prior permission or information from 3rd November, 1985 and has not produced any certificate to regularized his absence and hence in terms of the above certified standing orders he is deemed to have left the

services of his own accord and therefore his name deleted from the muster roll with immediate effect. Clause 24A(ii) of the certified standing orders which is reproduced hereinabove shows that the employer can invoke this clause only if a workman remains absent for a period exceeding 30 days without intimation or prior permission, and in such an event the employer is given discretion to consider that the workman has voluntarily resigned from service. According to the letter dated 3-1-86 Exb. 19 the workman remained absent without intimation or prior permission from 3rd November, 1985. This contention of the employer does not appear to be correct. While deciding the issue No. 2 it has been held by me that the workman has succeeded in proving that he resumed duties on 21-11-85. The muster roll produced at Exb. 32 (E) proves that the workman had attended his duties on 21-11-85. The employer has also admitted that the workman had reported for duties on 21-11-85 in the morning shift and that at that time he was served with the memos and he was paid salary. The contention of the employer is that the workman did not perform his duties on 21-11-85 but on receipt of the said memos and charge sheet he left the place. However it has been held by me while deciding the issue No. 2 that the workman had reported for duties in the afternoon shift also. Therefore there is no substance in the contention of the employer that the workman remained absent from 3-11-85. The evidence proves that he attended the duties on 21-11-85. Now the question is whether there was any intimation from the workman to the employer regarding his absence from 22-11-85 till the date his services were terminated on 3-1-1986.

15. It is an admitted fact that the workman had not attended his duties after 21-11-85. However, there is a letter dated 21-11-85 Exb. 15 written by the workman to the Managing Director complaining that the security assistant has not given him entry on 21-11-85 as per the order of the of the Depot Manager. This letter was received in the office of the Managing Director on 23-11-85 and in the office of the Chairman on 25-11-85. This is not denied by the employer. There is no immediate reply to the letter dated 21-11-85 of the workman. The workman has stated that he received the charge sheet dated 21-11-85 from the employer on 2-12-85. He has produced his reply dated 5-12-85 to the charge sheet at Exb. 17 colly. In this reply the workman has denied the allegation made against him in the charge sheet. He has again reiterated in the said reply that on 21-11-85 he was not given entry in the depot premises by the Security Asst. as per the orders from the Depot Manager. He has denied that he had absconded from the depot without any intimation to the superiors and has further stated that because of the orders of the superiors he could not join the duty from 21-11-85. Thus the letter dated 21-11-85 and the reply dated 5-12-85 prove that the workman had intimated to the employer about his absence from 22-11-85 and had given the reasons for his absence. The workman had not remained absent because of his sickness but according to him it was because he was prevented from attending his duty by the Security Asst. as per the orders of the Depot Manager. There is

no evidence from the employer to show that on receipt of the letter dated 21-11-85 and the reply dated 5-2-85 the workman was asked to resume his duties. It is only by the letter dated 23-12-1985 Exb. 18 that the Personnel Officer for the first time referred to the letter dated 21-11-85 of the workman and asked him to report for duties within 48 hours. In this letter the employer for the first time denied that the workman was not given entry in the depot as per the order of the Depot Manager and he was warned that if he failed to do so necessary action will be taken against him. The workman has admitted that the said letter was received on 26-12-85. He has stated in his evidence that he did not report because he was sick. He has further stated that he gave sick note informing the Personnel Officer about his sickness from 24-12-85. However no evidence has been produced by the workman to prove that he had given such a sick note. But he has produced the medical certificate alongwith the letter dated 29-1-86 Exb. 20, wherein he stated that he was fit to resume his duties from 30-1-86. In his cross examination what is denied is that he had not attached medical certificate produced by the workman in the course of his evidence before this Tribunal was not disputed nor it was suggested to him that it is a false certificate. The said certificate mentions that the workman was sick from 24-12-85 to 19-1-86 and that he was fit to resume duties from 30-1-86. He has admitted in his cross examination that from 26-12-85 to 29-1-86 he did not make any correspondence with the employer. Thus there is an admission on the part of the workman that there was no intimation from him to the employer during the period 26-12-85 to 29-1-86 about his sickness. However, in my view this period is not relevant for deciding whether the termination of service of the workman is legal and justified because his services were terminated by letter dated 3-1-86 and therefore the period which is relevant is the period exceeding 30 days prior to 3-1-86. The evidence which has been discussed by me above shows that during the period 22-11-85 to 3-1-86 the workman had informed to the employer that he was unable to attend to his duties because he was prevented from doing so by the Security Asst. as per the orders of the Depot Manager. This was informed to the employer by the workman by his letter dated 21-11-85 which was received by the employer on 23/25 November, 1985 and by his reply dated 5-12-85 to the charge sheet. The receipt of the said letter dated 21-11-85 and the reply dated 5-12-85 has been admitted by the employer. Thus the workman had intimated of his absence because to the employer after 21-11-85 and he had also given reasons for his absence. Whether the workman was really prevented from continuing his duties on 21-11-85 is entirely a different issue. In view of the evidence which is discussed by me above, I am of the view that the employer could not have invoked clause 24A (ii) of the Certified Standing Orders as the said clause was not applicable to the case of the workman. In my view the employer ought to have treated the absence of the workman as unauthorised and as such ought to have issued a charge sheet to the workman for misconduct, then held an inquiry and if the misconduct was held to be proved could have terminated the services of the

workman or could have imposed any other punishment which was justified in the circumstances of the case. I therefore hold that the employer has failed to prove that the workman had remained absent without intimation for a period exceeding 30 days and as such he was deemed to have resigned from service. I therefore answer the issue No. 3 in the negative.

16. *Issue No. 4:* The letter dated 23-12-85 of the employer to the workman has been produced at Exb.18. The workman has admitted that he received the said letter from the employer. According to the workman he received the said letter on 26-12-85. In the said letter the workman was asked to report for duties within 48 hours of the receipt of the said letter. The workman in his examination in chief itself has admitted that he did not join because he was sick. He has stated that he had given a sick note informing the Personnel Officer about his sickness from 24-12-85 and that he was in the hospital at Margao. No evidence has been produced by the workman to prove that he had given the sick note as stated by him. Infact in his cross examination he has given a different story. He stated that he did not send any letter but he went personally to the Depot Manager which fact is denied by the employer. In cross examination of the Depot Manager no suggestion was put to him that the workman had come to the depot personally to meet him on receipt of the letter dated 23-12-85. Thus there is no evidence from the workman to prove that he had given a sick note or that he had personally gone to meet the Depot Manager on receipt of the letter dated 23-12-85 on 26-12-85 to inform his inability to join the services on account of his sickness. I, therefore hold that the employer has succeeded in proving that the workman failed to report for duties though he was directed to do so by letter dated 23-12-85. I, therefore answer the issue No. 4 in the affirmative.

17. *Issue No. 5:* The employer in para. 10 of its written statement has taken the stand that the letter dated 3-1-1986 issued by the employer meant resignation from service by the workman and not termination of his service by the employer. The letter dated 3-1-86 has been produced at Exb. 19 this letter states that of the workman has remained absent without prior permission or information from 23rd November, 1985 till the date of the issuing of the said letter. The said letter refers to the certified standing orders being that "if any workman remains absent without intimation or prior permission for a period exceeding 30 days, he shall be deemed to have resigned from the services and the employer is entitled to consider such workman having voluntarily resigned from his job". The letter dated 3-1-86 states that the continuous absence of the workman proves beyond doubt that the workman was no longer interested in service and that he has left the services of his own accord and therefore his name is deleted from the muster roll with immediate effect. Adv. Shri P. J. Kamat has relied upon the judgement of the Supreme Court in the case of Buckingham and Carnatic Co. Ltd., v/s Venkatiah and another reported in 1950-83 Supreme Court Labour Judgments Vol. 1 page 1 in support of his

contention that in the present case the employer has not terminated the services of the workman but the workman is deemed to have resigned from service in terms of clause 24A (ii) of the Certified Standing Orders which are reproduced in the letter dated 3-1-1986. In the case of Buckingham and Carnatic Co. Ltd., (supra) the Certified Standing Orders of the company provided as follows:

Absent without leave:— "Any employee who absents himself for eight consecutive working days without leave shall be deemed to have left the company's service without notice thereby terminating his contract of service"

18. The Supreme Court held that the above provision proceeds on the basis that absence for eight consecutive days without leave will lead to the inference that the absentee workman intended to terminate his contract of service. The Supreme Court held that the said provision inevitably leads to the conclusion that if an employee is absent for eight consecutive days without leave he is deemed to have terminated his contract of service and thus relinquished or abandoned his employment. In the present case also clause 24A (ii) of the Certified Standing Orders provides for deemed resignation from service by the workman if he remains absent without intimation or prior permission for a period exceeding 30 days. Therefore there could have been the presumption that the workman had deemed to have resigned from service and thereby terminated his services if the case of the workman fell within the provisions of clause 24A (ii) of the Certified Standing Orders. However, while deciding the issue No. 3 it has been held by me that the employer has failed to prove that the workman remained absent without intimation for a period exceeding 30 days. It has been held by me that the employer could not have invoked clause 24A (ii) of the Certified Standing Orders against the workman because the workman had intimated to the employer about his absence from duty and he had also given the reasons for his absence. Whether the reasons given are the true reasons or not is a different question. I, therefore hold that since clause 24A (ii) did not apply to the workman's case there is no deemed resignation on the part of the workman as contended by the employer. The said letter states that the name of the workman is deleted from the muster roll which in other words means striking off the name of the workman from the muster roll. This act on the part of the employer amounts to terminating the services of the workman. In the circumstances I hold that the letter dated 3-1-86 amounts termination of service of the workman by the employer and not resignation from service by the workman. I, therefore answer the issue No. 5 accordingly.

19. *Issue No. 6:* Admittedly the employer had invoke clause 24A(ii) of the Certified Standing Orders against the workman. It has been held by me that the employer could not have invoked the said clause against the workman, because the said clause did not apply to the workman's case. It has been also held by me that the letter dated 3-1-86 amounted to termination of service

of the workman and not his resigning from service. The services of the workman were not terminated for misconduct. No enquiry was conducted against him before terminating his services. Though a charge sheet dated 21-11-85 was issued to him no enquiry was conducted against him in respect of the said charge sheet. The services of the workman were not terminated in relation to the said charge sheet. The termination letter dated 3-1-1986 does not state that the workman was guilty of misconduct. In my view the termination of service of the workman would fall within the definition of "Retrenchment". Sec. 2(oo) of the Industrial Disputes Act, 1947 defines "Retrenchment" as follows:

(oo) "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include;

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health"

20. As mentioned earlier the termination letter dated 3-1-1986 shows that the services of the workman were not terminated for misconduct. It has been held by me that the employer could not have invoked clause 24A(ii) of the Certified Standing Orders against the workman which provide for deemed resignation from service on the part of the workman if he remained absent without intimation or prior permission for a period exceeding 30 days. The employer did not terminate the services of the workman as a matter of punishment inflicted by way of disciplinary action. The case of the workman does not fall in any of the exceptions laid down in Sec. 2(oo) of the Industrial Disputes Act, 1947. The Supreme Court in the case of Santosh Gupta v/s State Bank of Patiala reported in 1980 II LLJ pg. 72 has held that every type of termination of service of a workman except of the types specifically excepted amounts to retrenchment. I, therefore hold that in the present case termination of service of the workman amounts to "retrenchment" within the meaning of Sec. 2(oo) of the Industrial Disputes Act, 1947. It is to be seen whether the employer had complied with the conditions laid down for valid retrenchment.

21. Sec. 25F of the Industrial Disputes Act, 1947 prescribes the procedure for retrenching the services of

a workman. It lays down that the services of a workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of one month's notice and he has been paid compensation at the rate of 15 days average wages per each completed year of service or any part thereof in excess of six months. Sec. 25 B of the Industrial Disputes Act, 1947 defines "Continuous Service". It states that a person shall be deemed to be in continuous service under an employer for a period of one year. If the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine and 240 days in any other case. In the present case admittedly the workman was not employed beyond ground in a mine. The workman was employed from 27-9-1982 as is evident from his appointment letter dated 27-9-1982 Exb. 10 and he was confirmed in service w.e.f. 1-10-1984 as per the confirmation order dated 17-10-84 Exb. 11. The services of the workman were terminated w.e.f 3-1-1986. Therefore the workman was in employment for more than 240 days prior to the date of termination of his service. Therefore the provisions of Sec. 25F of the Industrial Disputes Act, 1947 applied to him. The Supreme Court in the case of M/s. Avon Services Production Agency Pvt. Ltd., v/s Industrial Tribunal, Hariyana and others reported in AIR 1970 SC 170 has held that giving notice and payment of compensation is a condition precedent in the case of retrenchment and failure to comply with the prescribing conditions precedent for valid retrenchment in Sec. 25F renders the order of retrenchment invalid and inoperative. Same principles are laid down by the Supreme Court in the case of Gammon India Ltd. v/s Niranjana Das reported in (1984) I SCC 509. In this case the Supreme Court has held that in the absence of compliance with the requisites of Sec. 25F the retrenchment bringing about the termination would be void-ab-initio. In the present case admittedly neither one month's notice was given to the workman, nor notice pay was given to him nor he was paid retrenchment compensation all the time when his services were terminated. Therefore there is no compliance of the provisions of Sec. 25F of the Industrial Disputes Act, 1947 from the employer. In the circumstances the termination becomes illegal and unjustified. I, therefore hold that the action of the employer in terminating the services of the workman w.e.f. 3-1-1986 is not legal and justified. I, therefore answer the issue No. 6 in the negative.

22. Issue No. 7: It has been held by me that termination of service of the workman by the employer w.e.f. 3-1-86 is illegal and unjustified. The workman has claimed that he is entitled to reinstatement in service with full back wages. The ordinary rule is that when the termination of service of a workman is held to be illegal and unjustified the workman should be reinstated in service unless there are reasons which do not warrant reinstatement or full back wages. In the present case the evidence on record shows that the conduct of the workman was not good. Though according to the

workman he was sick from 4-11-85 and he was under medical treatment till 19-11-85 he did not inform the employer about his absence nor regarding his sickness and attended the duties only on 21-11-85. Thereafter, by letter dated 23-12-85, the employer had asked the workman to report for duties within 48 hours of the receipt of the said letter. The workman has admitted that he received the said letter on 26-12-85. However, according to him he did not report for duties because he was sick from 24-12-85 and that he recovered only on 29-1-86. However, the workman did not inform the employer about his sickness from 24-12-85. There is no evidence that he approached the employer on receipt of the said letter dated 23-12-85 and informed that he was not able to report for duties on account of his sickness. The workman could have very well informed the employer by letter that he was sick and therefore he was unable to report for duties. The workman has admitted that he received the termination letter dated 3-1-1986 on 10-1-1986. Even after receiving this termination letter the workman did not inform the employer that he was sick and therefore he could not report for duties. The information about his sickness is given by him for the first time by letter dated 29-1-86, that is, a long time after he had received the termination letter. The above facts show that the workman was grossly negligent, most casual in his approach, showed total lack of responsibility, and his behaviour was most undisciplined.

23. The employer has produced evidence of the past service record of the workman. The employer has produced the memos dated 23-9-85 Exb. 36 and 2-10-85 Exb. 34 issued to the workman. The memo dated 23-9-85 was in respect of the finding of discrepancies in the oil stock. On receipt of the reply dated 25-9-85 Exb. 37 from the workman, a warning letter dated 1-10-85 Exb. 30 colly was issued to him. The memo dated 2-10-85 was in respect of the behaviour of the workman. The said memo stated that the workman had disobeyed the order of the Depot Manager. After the receipt of the reply dated 12-10-85 Exb. 35 from the workman a warning letter dated 21-10-85 Exb. 30 colly was issued to him. The workman was also issued a charge sheet dated 5-10-85 Exb. 38. The said charge sheet was issued for habitual late attendance, habitually remaining absent without prior sanction, habitually refusing the lawful orders of the superiors and unsatisfactory performance. On receipt of the reply dated 12-10-85 Exb. 39 to the charge sheet a warning letter 24-10-85 Exb. 40 was issued to the workman. The above evidence therefore sufficiently proves that the past service record of the workman was not good and for which he was issued warnings. There is no evidence from the workman to show that he had challenged the said warning letters issued to him or that he had reacted to the said warning letters.

24. Besides, the workman's services were terminated on 3-1-86, however, as per the order of the Government the reference of the dispute was made by the Government only on 30th August, 1989. There is no evidence from the workman as well as from the employer

as to when the dispute was raised by the workman. However, since the reference was made by the Government in August, 1989, that is almost more than 3 years after the services of the workman were terminated, it shows that the dispute was raised by the workman after a considerable long time, even if it is taken that the workman wanted to wait for the result of the appeal which he had made to the Managing Director because the order dismissing the appeal was passed by the Managing Director on 5-5-86 and it was received by the workman on 7-5-86. There is no explanation from the workman for the delay in raising the dispute. The records of the case show that the case was adjourned several times either at the request of the workman or at the request of the employer on some ground or the other. The Supreme Court in the case of H.M.T. Ltd. v/s Labour Court, Ernakulam & Ors. reported in 1994 II CLR 22 held that in the case before it the workman was dismissed in July, 1979 and that more than 14 years had elapsed since then. The Supreme Court held that it is now accepted that no party should suffer on account of the delay in the decision of the Court and taking into consideration all the facts the Supreme Court held that it would meet the ends of justice if instead of granting full back wages, the workman is given 60% of the back wages till he is reinstated. In the present case the records show that the case was adjourned several times either at the request of the workman or at the request of the employer on some ground or the other. The services of the workman were terminated on 3-1-1986 and thus more than 14 years have passed since the date of terminated of his service. Therefore applying the principles laid down by the Supreme Court in the above referred case and considering all the facts mentioned herein above such as the conduct of the workman, his past service records, in my view ends of justice would meet if the workman is reinstated in service with 40% of his back wages till the date of the award. In the circumstances, I hold that the workman is entitled to reinstatement in service with 40% of his back wages from the date of termination of his service till the date of the passing of the award with consequential benefits and continuity in service. I, therefore answer the issue No. 7 according.

Hence, I pass the following order.

Order

It is hereby held that the action of M/s. Kadamba Transport Corporation Limited, Panaji, in terminating the services of the workman Shri Yeshwant Divkar, Cashier-cum L.D.C., with effect from 3-1-1986 is illegal and unjustified. The workman Shri Yeshwant Divkar is ordered to be reinstated in service with 40% of his back wages from the date of termination of his service till the date of the Award, with all other consequential benefits and continuity in service.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Department of Law & Judiciary

Law (Establishment) Division

Notification

No. LD/4069/02-Estt

The Government of Goa is pleased to constitute an Internal Screening Committee consisting of the following members for the purpose of screening cases of employees of Groups 'A' to 'D' in the sub-ordinate Judiciary excluding Judges, who have attained the age of 50 years/55 years or will be completing 30 years of service or 30 years of service qualifying for pension as the case may be in terms of Circular No. 2/6/94-PER(Vol) (Part) dated 8-1-2002 from Department of Personnel, Secretariat, Panaji:-

- | | | |
|--|-----|----------|
| 1. The District Judge | ... | Chairman |
| 2. The Seniormost Addl. District Judge | ... | Member |
| 3. The Seniormost Civil Judge Sr. Div. in the District | ... | Member |

By order and in the name of the Governor of Goa.

Mario da Silva, Under Secretary (Law).

Panaji, 28th January, 2003.

Department of Personnel

Order

No. 7/2/99-PER (Part I)

Read: Order No. 7/2/99-PER (Part I) dated 30-10-2002.

Shri Ashwani Kumar, IAS, Secretary (Vigilance), Secretariat, Panaji shall hold the charge of Director of Vigilance in addition to his own duties, with immediate effect thereby relieving Shri B. S. Bhalla, IAS, Secretary (Information Technology) of the additional charge.

By order and in the name of the Governor of Goa.

Vikas Mardolkar, Under Secretary (Personnel).

Panaji, 30th January, 2003.

Order

No. 7/1/85-PER

Government is pleased to post Shri K. V. Prabhugaonkar, Director of Information and Publicity as Special Secretary (Information) to Government at Secretariat, with immediate effect.

Shri Prabhugaonkar shall draw his pay and allowances against the post of Director of Information and Publicity.

Consequently, Shri Rajesh Singh, Press Liaison Officer (Group 'A') to Hon'ble Chief Minister shall continue to hold the charge of the post of Director of Information and Publicity, in addition to his own duties and until

further orders in terms of Government Order No. 4/3/96-PER dated 30-09-2002.

By order and in the name of the Governor of Goa.

D. M. Borkar, Joint Secretary (Personnel).

Panaji, 4th February, 2003.

Order

No. 6/1/2002-PER

Shri R. Mihir Vardhan, Director of Settlement & Land Records, Panaji, shall hold the charge of the post of Director of Mines in addition to his own duties, with immediate effect and until further orders, thereby relieving Smt. Jayshree Raghu Raman, IAS, Secretary (Industries & Mines) of the additional charge.

By order and in the name of the Governor of Goa.

Vikas Mardolkar, Under Secretary (Personnel).

Panaji, 4th February, 2003.

Order

No. 7/2/99-PER(Part-I)

On placement of his services at the disposal of the Government of Goa by the Government of India, Ministry of Home Affairs, New Delhi vide their Order No. 14016/41/2002-UTS.I dated 28th January, 2003, the Government of Goa is pleased to appoint Shri D. S. Negi, IAS (AGMU: 75) as Chief Secretary to the Government of Goa with effect from 10-2-2003 (F. N.).

By order and in the name of the Governor of Goa.

D. M. Borkar, Joint Secretary (Personnel).

Panaji, 10th February, 2003.

Department of Revenue

Notification

No. 22/113/2000-RD

Whereas by Government Notification No. 22/113/2000-RD dated 12-3-2001 published on pages 1370 to 1371 of Series II, No. 51 of the Official Gazette, dated 22-3-2001 and in two newspapers (1) "O Herald" dated 22-3-2001 (2) "Goa Times" dated 05-03-2002 it was notified under section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification was likely to be needed for the public purpose viz. Land Acquisition for approach road to Aldona, Corjuem Bridge.

And whereas, the Government of Goa (hereinafter referred to as "the Government") after considering the report made under sub-section (2) of section 5A of the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to "the said land").

Now, therefore, the Government hereby declares, under section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also appoints, under clause (c) of section 3 of the said Act, the Deputy Collector/S.D.O., Panaji to perform the functions of a Collector for all proceedings hereinafter to be taken in respect of the said land, and directs him under section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the Office of the said Deputy Collector/S.D.O., Panaji till the award is made under section 11.

ANNEXURE - B

SCHEDULE

(Description of the said land)

Survey No./ Sub-Div. No.	Names of the persons believed to be interested	Appx. area in sq. mts.
1	2	3
Taluka: Bardez		
Village: Aldona		
182 16	O: Leonard Lobo.	725.00
182 17	O: Comunidade of Fraternal Aldona.	75.00
182 18 (Part)	O: Crecencia D'Souza.	85.00
183 2 (Part)	O: 1) Thomas Siril Mendes. 2) Theona Purification Lobo. 3) Cupertino Adelino Lobo.	15.00
184 1 (Part)	O: Fr. Hilario D'Souza.	535.00
184 3 (Part)	O: 1) Ciril Lobo. 2) Francisco Paulo Lobo. 3) Hilario Rosario C. Lobo.	710.00
	T: 1) Krishna Soma Mandrekar.	
184 4 (Part)	O: 1) Angel Mario Lobo. T: 1) Krishna Soma Mandrekar.	300.00
184 6 (Part)	O: 1) Paulina Verela wife of Dr. Raul De Asses Varrela.	1275.00
	T: 1) Saju Yeso Naik.	
184 8 (Part)	O: 1) Ciril Lobo. 2) Francisco Paul Lobo. 3) Hilario Rosario C. Lobo.	3775.00
	T: 1) Vasu Ladu Kerkar.	
184 10 (Part)	O: 1) A. D. S. Carvalho. T: 1) Saju Yesso Naik.	5.00
184 11 (Part)	O: 1) Pascoal Xavier Mendes. 2) Francisco Xavier Mendes.	275.00
	T: 1) Yeshwant Vishnu Gadekar.	
184 12 (Part)	O: 1) Edal Rodrigues.	775.00
184 13 (Part)	O: 1) A. D. S. Carvalho. T: 1) Saju Yeso Naik.	725.00
184 14 (Part)	O: 1) Pascoal Xavier Mendes. 2) Francisco Xavier Mendes.	150.00
	T: 1) Yeshwant Vishnu Gadekar.	
184 15	O: 1) Edal Rodrigues.	525.00
184 18 (Part)	O: 1) Comunidade Fraternal Aldona.	60.00
	T: 1) Pandurang Rama Bhagat.	
184 19 (Part)	O: 1) Comunidade Fraternal Aldona.	55.00

Taluka: Bardez

Village: Corjuem

14 1 (Part)	O: 1) Narayan Krishna Kerkar. T: 1) Madhukar Deu Mayekar.	600.00
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1	2	3
14 2 (Part)	O: 1) Narayan Krishna Kerkar. T: 1) Naguesh Kusta Bandodkar.	1225.00
14 3 (Part)	O: 1) Narayan Krishna Kerkar.	1275.00
14 4 (Part)	O: 1) Narayan Krishna. T: 1) Pandurang Krishna Gadekar. 2) Ragunath Krishna Gadekar. 3) Anand Krishna Gadekar. 4) Vishwanath Krishna Gadekar.	2075.00
14 5 (Part)	O: 1) Narayan Krishna Kerkar. T: 1) Tukaram Navso Gadekar.	1125.00
14 6 (Part)	O: 1) Narayan Krishna Gadekar. T: 1) Rama Vishnu Salgaonkar.	460.00
14 7 (Part)	O: 1) Narayan Krishna Kerkar. T: 1) Dharam Dattaram Palni.	510.00
14 8 (Part)	O: 1) Clevis Ralph Tavares. 2) Edita Maria Mendes.	1025.00
14 9 (Part)	O: 1) Clevis Ralph Tavares. 2) Pandurang Narayan Chari Bandodkar. 3) Edith Maria Mendes.	875.00
14 11 (Part)	O: 1) Narayan Krishna Kerkar. T: 1) Babli Govind Mayekar.	1625.00
14 12 (Part)	O: 1) Narayan K. Kerkar. T: 1) Hari Narayan Gadekar.	1625.00
14 13 (Part)	O: 1) Tome D'Souza. 2) Esperance D'Souza. 3) Josephine Perfina.	890.00
28 1 (Part)	O: 1) Carlos Fereira Alvares. 2) Anant Narayan Kamat. 3) Vaman Facro Panjkar. 4) Eusebio Caetano Mendes. 5) Torcila Filomena Mendes. 6) Agostino Nelson D'Souza. 7) Josephine Perfina D'Souza. 8) Maria Sarafia Lobo. 9) Carlos Raikar. 10) Vaikuntha Vithal Vaigankar. 11) Benjamin Gomes. 12) Maria Vaz. 13) Philip Vaz. 14) Richard Lobo. 15) Maria Espiciosa D'Souza. 16) Frederies Jose D'Souza. 17) Reshma R. Bandodkar. 18) Eknath Krishna Gaonkar. 19) Janardhan Shanu Nagvekar. 20) David Mendes. 21) Clara D'Souza. 22) Olinda Pereira Cardoso. 23) Cynthia Pereira. 24) Bella Barreto.	570.00

Total: 23,945.00

By order and in the name of the Governor of Goa.

C. D. Gawade, Under Secretary (Revenue).

Panaji, 14th January, 2003.

Notification

No. 22/2/2003-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. L. A. for improvement of missing link between Ganapati Temple Road and J. M. Road in V. P. Aquem-Baixo, Salcete Taluka.

Now, therefore, the Government hereby notifies, under sub-section (1) of section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contract for the disposal of the said land by sale, lease, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed under paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under section 6 of the said Act will be published in the Official Gazette and in two daily newspapers and public notice thereof shall be given in due course. If the acquisition is abandoned wholly or in part, the fact will also be notified in the same manner.

4. The Government further appoints, under clause (c) of section 3 of the said Act, the Dy. Collector (LA), Margao to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government also authorises under sub-section (2) of section 4 of the said Act, the following Officers to do the Acts, specified therein in respect of the said land.

1. The Collector, South Goa District, Margao-Goa.
2. The Dy. Collector (L.A.), Margao.
3. The Executive Engineer, WD. VI (Roads-South) PWD, Fatorda, Margao.
4. The Director of Settlement & Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the office of the Dy. Collector (LA), Margao for a period of 30 days from the date of publication of this notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Taluka: Salcete		Village: Aquem Baixo	
Sy. No./ /Sub Div. No.	Names of the persons believed to be interested	Address	Approx. area in sq. mts.
1	2	3	4
13 6 (part)	1. Sacramento Agostinho Vaz.	Central Orta Aquem-Baixo Salcete.	250
13 7 (part)	1. Andre N. Vaz. 2. Joaquim Marian Vaz. 3. Gopal Tukaram Rivonkar. 4. Shila Laximan Narayan Bhagwant. 5. Bernandina Vaz. 6. Antonio Gregorio Victor Vaz. 7. Thomas Francisco Dias. Filomena Josefine Dias. 8. (1) Manuel Peitaol. (2) Benibra Chaquinha Vaz e Leitao alias Jufralentao.	Central Orta Aquem-Baixo Salcete.	150
13 8 (part)	Caterina Vaz. 1. Luisa Maria Vaz. 2. Luis Cardozo. 3. Lourencinha Vaz. 4. Mariano Fernandes. 5. Ana Piedade Vaz. 6. Gabriel Cardozo. 7. Caetano Vaz. 8. Agostinho Miranda. Rufina Josepha Miranda.	Central Orta Aquem Baixo Salcete.	100
Total: 500			

By order and in the name of the Governor of Goa.

C. D. Gawade, Under Secretary (Revenue).

Panaji, 29th January, 2003.

Corrigendum

No. 22/72/2000-RD

Read: (1) Notification No. 22/72/2000-RD dated 6th July, 2001 of the Revenue Department, Secretariat, Panaji.

The area shown against the survey No. 104/5 (part) in the Notification referred above be read as 580 sq. mts. instead of 589 sq. mts.

By order and in the name of the Governor of Goa.

C. D. Gawade, Under Secretary (Revenue).

Panaji, 29th January, 2003.

Department of Water Resources

Office of the Chief Engineer

Order

No. 3/25-4/87-WRD/1171

- Read: 1) Government Order No. 3/25-4/87-Irrg-I dated 5-8-1991.
 2) Government Order No. 3/25-4/87-Irrg-II dated 5-8-1991.
 3) Government Order No. 3/25-4/87-Irrg(Part file) dated 19-10-1992.
 4) Government Order No. 3/25-4/87-WRD dated 27-6-2002.
 5) Government Order No. 3/25-4/87-WRD/589 dated 21-8-2002.

Government is pleased to extend the ad hoc promotion of the following Assistant Engineers/Assistant Surveyor of Works (Civil) in the Water Resources Department ordered vide Government orders referred to above, for further period of three months from 1-1-2003 to 31-03-2003 or till the posts are filled on regular basis whichever is earlier, on the same terms and conditions as stipulated in the aforesaid orders.

1. Shri Sasikumar T.
2. Shri D. Prakash.
3. Shri N. D. Gopalkrishna.
4. Shri M. D. Shanbhag.
5. Shri Shreedharan K. Vallapil.
6. Shri V. D. Joseph.
7. Shri K. Venugopalan.
8. Shri S. D. Kalgutkar.
9. Shri C. Shreedharan.
10. Shri Ashok G. Nooli.
11. Shri Mohan A. Kamble.

This issues with the approval of Goa Public Service Commission, conveyed vide their letter No. COM/II/11/27(1)/92 dated 20-1-2003.

By order and in the name of the Governor of Goa.

S. D. Sayanak, Chief Engineer (WR) and Ex-Officio Additional Secretary.

Panaji, 22nd January, 2003.

Order

No. 3/25-4/87-WR/1172

- Read: 1) This Office Order No. 3/25-4/87-WR/1202 dated 23-1-2002.
 2) This Office Order No. 3/25-4/87-WR/610 dated 26-8-2002.

Government is pleased to extend the ad hoc promotion of the following Assistant Engineers/Assistant Surveyor of Works (Civil) in the Water

Resources Department for further period of 3 months from 23-01-2003 to 22-04-2003 or till the posts are filled on regular basis, whichever is earlier, on the same terms and conditions as stipulated in the aforesaid orders.

1. Smt. Mohinibai K.
2. Shri D. S. Powar.
3. Shri V. K. Abraham.
4. Shri Ramdas K. Naik.
5. Shri D. V. Bakre.
6. Shri S. K. Dessai.
7. Shri V. G. Malik.
8. Shri Suresh Babu.

This issues with the approval of Goa Public Service Commission, conveyed vide their letter No. COM/II/11/27(1)/92 dated 20-1-2003.

By order and in the name of the Governor of Goa.

S. D. Sayanak, Chief Engineer (WR) and Ex-Officio Additional Secretary.

Panaji, 22nd January, 2003.

Order

No. 22-181/CE-WR/Adm.II/1177

- Read: 1) This Office Order No. 22-1-81/CE-Irrg/Adm.II/1163 dated 11-1-2000.
 2) Letter No. NGPDA/PF/MVS/3091/02 dated 13-12-2002.
 3) This Office Order No. 22-1-81/CE-WR/Adm.II/1308 dated 11-2-2002.

Approval of the Government is hereby conveyed for extension of deputation of Shri M. V. Sakenawar, Assistant Engineer of this Department and presently working on deputation to North Goa Planning & Development Authority, Panaji as Assistant Engineer for further period of one year, i.e. from 24-1-2003 to 23-1-2004 on the same terms and conditions as laid down in Government O.M. No. 13-4-74-PER dated 12-2-1999 and as amended from time to time.

This is issued with the approval of the Government conveyed vide U. O. No. 64 dated 07-01-2003.

By order and in the name of the Governor of Goa.

S. D. Sayanak, Chief Engineer (WR) and Ex-Officio Additional Secretary.

Panaji, 22nd January, 2003.

Corrigendum

In (Extraordinary No. 3) of Official Gazette, Series II, No. 34 dated 26th November, 2002 the approximate area in sq. mts to the Schedule of Revenue Department's Notification No. 22/71/2002-RD dated 23rd October, 2002 on page 848 the area may be corrected to read as "1,03,000", "13,500" and "1,16,500" instead of "1030.00", "135.00" and "116500" respectively.